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70-297

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 1842

JEFFERSON COUNTY TEACHERS ASSOCIATION
KENTUCKY EDUCATION ASSOCIATION
LOUISVILLE AND JEFFERSON COUNTY FEDERATION OF TEACHERS, LOCAL 672
WALLACE CANTRELL
THOMAS D. BELEW
MARY LOU JACKSON and
JAMES O. HALCOMB, JR. - - - - Petitioners

versus

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - - - - Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

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JEFFERSON COUNTY TEACHERS ASSOCIATION
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WALLACE CANTRELL
THOMAS D. BELEW
MARY LOU JACKSON and
JAMES O. HALCOMB, JR. - - - *Petitioners*

v.

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - - - *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

Petitioners pray that a Writ of Certiorari issue to review the Judgment of the Court of Appeals of Kentucky entered in the above entitled case on October 30, 1970.

CITATION TO OPINION BELOW

The opinion of the Court of Appeals of Kentucky is reported and the citation thereof is Ky., 463 S. W. 2d 627. The opinion of the Court of Appeals is attached

as Appendix A hereto. The Mandate of the Kentucky Court of Appeals affirming the judgment of that Court on Petitioner's motion for rehearing is attached hereto as Appendix A-1.

JURISDICTION

The Judgment of the Court of Appeals of Kentucky was entered October 30, 1970. An order denying petitioners' request for rehearing was entered March 19, 1971. Title 28, United States Code, Section 1257, confers jurisdiction upon this Court to review by Writ of Certiorari, the final Judgment rendered by the highest Court of a state in which a decision could be had. The Court of Appeals of Kentucky is the highest Court of the State of Kentucky in which a decision can be had.

QUESTIONS PRESENTED

(1) Could the Circuit Court, Jefferson County, Kentucky, enjoin a peaceful strike by public school teachers who were employees of the Jefferson County Board of Education.

(2) Whether the prohibitory provisions of the injunction granted by the Circuit Court were over-broad.

STATEMENT OF FACTS

On February 24, 1970, the teachers in the public schools of Jefferson County, Kentucky, employees of the Jefferson County Board of Education, went on strike. The teachers remained away from their work peacefully, without picketing, violence, or civil dis-

ruption or breach of the peace until the Circuit Court of Jefferson County, Kentucky issued a temporary injunction on February 28, 1970. Thereafter, on March 12, 1970, by agreed order, the case was submitted to the Jefferson Circuit Court on the prayer of the Jefferson County Board of Education for a permanent injunction. The Circuit Court on March 12, 1970, signed a Judgment making the temporary injunction permanent against all the Defendants before that Court. The Judgment of the Circuit Court of Jefferson County, Kentucky is attached hereto as Appendix B (both temporary and permanent injunctions).

CONSTITUTIONAL PROVISIONS AND STATUTES WHICH THE CASE INVOLVES

1. (A) The injunction granted by the Circuit Court of Jefferson County, Kentucky was in violation of Amendment XIV, Section 1 of the Constitution of the United States which reads:

> "All persons born and naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*" (Emphasis Ours.)

(B) The injunction granted by the Circuit Court of Jefferson County, Kentucky violated Amendment I of the Constitution of the United States which reads:

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech of the press; or the right of the people peaceably to assemble and petition the government for a redress of grievances."

2. The Judgment of the Court of Appeals of Kentucky involved the interpretation of Kentucky Revised Statutes (K.R.S.) 336.130. Chapter 336, Kentucky Revised Statutes is entitled, "Department of Labor." This chapter is in *pari materia* with Chapter 337, Kentucky Revised Statutes, entitled "Wages and Hours," and Chapter 338, Kentucky Revised Statutes, entitled "Safety and Health of Employees." K.R.S. Chapter 336 is attached hereto as Appendix C. K.R.S. 337.010(2) and K.R.S. 338.010(3) are most pertinent to an interpretation of K.R.S. 336.130. K.R.S. 337.010(2) reads:

"K.R.S. 337.050 and 337.060 shall not apply to employers and employes subject to the provisions of the Federal Railway Labor Act, the Federal Safety Appliance Act, the Federal Railroad Mediation Act, the Interstate Commerce Commission or the Kentucky Public Service Commission, nor to hospitals or charitable institutions, nor to employes of the state or the United States or political subdivisions of either, nor to farming or work performed in homes, residences, restaurants, hotels and apartment houses such as cleaning, waiting on tables, washing dishes, cooking, answering calls of guests and waiting upon them and general house, restaurant or hotel work and outside salesmen."

K.R.S. 338.010(3) reads:

> "K.R.S. 338.020 to 338.060 shall not apply to employers and employes subject to the Federal Railway Labor Act, the Federal Safety Appliance Act, the Interstate Commerce Commission, or the Kentucky Public Service Commission, nor to places of employment subject to the jurisdiction of the Department of Mines and Minerals, nor to hospitals, or charitable institutions, nor to employes of the United States Government, the government of the Commonwealth or its political subdivisions, nor to farming or work performed in homes and residences."

FEDERAL QUESTIONS RAISED

Petitioners first raised the Federal Questions herein sought to be reviewed in their Answer to Respondent's Complaint filed in the Jefferson Circuit Court, Kentucky. Petitioners' answer is found on pages 13-15 of the Transcript of Record before the Kentucky Court of Appeals.

REASONS FOR GRANTING THE WRIT

A. The Court of Appeals of Kentucky judicially legislated that public school teachers in Kentucky do not have the right to engage in a work stoppage or strike. The Court, while acknowledging that legislation permitting public employees to strike would be valid, ignored the plain wording of the Kentucky Labor Statute K.R.S. 336.130 in arriving at its judicial conclusion.

K.R.S. 336.130 states *inter alia:*

> "Employees, collectively and individually may strike . . ."

This chapter of the Kentucky Statutes contains no definition of the word "employees" nor any exemption of public employees from its provisions.

Irrespective of the niceties of the legislative interpretation involved in this case, the real issue is the protection of basic constitutional rights. The Kentucky Court completely avoided being provoked into any discussion of the real issues of this case. Its opinion is devoid of any reasoning of the constitutional merits in support of its judicial declaration that public employees must be denied the right to strike even in the face of the plain wording of the Kentucky legislative act (K.R.S. 336.130).

In arriving at its conclusion, the Kentucky Court reasoned in error: (1) That the common law denied public employees the right to strike; (2) That the term "employee" as used in the statute K.R.S. 336.130 is ambiguous and that it does not include "public employees" within its definition. We feel that the Kentucky Court in attempting to achieve a social result which it feels is desirable, has deprived public school teachers of equal protection of the state law.

It has never been the common law of Kentucky that strikes by public employees are illegal. Section 233 of the Constitution of the Commonwealth of Kentucky adopted as its common law, those laws that were in force in the State of Virigina as of the first day of June, Seventeen Ninety Two (1792). Virginia had

adopted, as its common law, those laws in force in England as of March 24, 1607. The Kentucky Court has had opportunity to review the English common law concerning conspiracies of laborers in force as of 1607. In *Aetna Insurance Co., et al.* v. *Commonwealth,* 106 Ky. 864 (1899), the Kentucky Court said:

> "At the time we adopted the English law, the statutes passed in the time of the sixth Edward were in full force, which forbade all conspiracies and covenants or artificers, workmen, or laborers not to make or do their work but at a certain price or rate, under the penalty, on a third conviction, of the pillory and the loss of an ear, and to be taken as a man infamous.
>
> "But, so far as we are informed, the right of workingmen to combine for an increase or maintenance of their wages by lawful means has never been held unlawful in this Commonwealth. The statutes of Henry, Edward, and Elizabeth upon that subject, so far as the Kentucky authorities show, have always been as dead as they were in England after the act of 1875."

Apparently not feeling justified on the sole ground of a common law interpretation, the Kentucky Court finally based its decision on an interpretation of the word "employee" borrowed from the language of a 1940 Kentucky statute known as the Hunnicutt Act (Chapter 42bb, Carroll's Kentucky Code). The Hunnicutt Act concerned the general topic of labor including administration of the Department of Labor, Right to Strike, Wages and Hours, and Health and Safety of employees. The 1940 act had a general exemption sec-

tion (§1599C-39 Carroll's Kentucky Code) which exempted certain employees (including public employees) from the provisions of that act. In 1942, the Kentucky General Assembly completely revised all of the Kentucky Statutes, and in so doing, divided old Chapter 42bb into three separate chapters, being Chapter 336, "Department of Labor"; Chapter 337, "Wages and Hours"; and Chapter 338, "Health and Safety of Employees."

Carroll's §1599C-39, the exemption section, appears in Chapter 337 in revised form, and appears in Chapter 338 in revised form (different classifications having been added and subtracted for each chapter). *The exemption did not appear at all in Chapter 336.* (Emphasis Ours.)

Where statutes are *in pari materia* as here, the inclusion of an exemption in one part of the enactment contrast strongly with the absence of such exemption in the remaining part. This Court had opportunity to consider this maxim of legislative interpretation *(expressio unius est exclusio alterius)* in *Ford* v. *U. S.*, 273 U. S. 593, 47 Sup. Ct. 531, where it was held:

> "this maximum properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended to have opposite and contrary treatment."

The legislature of Kentucky in 1942, by enactment of Chapters 336, 337, and 338 specifically did not

exempt public employees from the provisions of Chapter 336.130. The statute is obviously drawn with care as proved by the meticulous exemption provisions of its sister Chapters 337 and 338 (page 4 of this Petition).

In holding that public employees could not strike, the Kentucky Court legislated words into the act that were not there. The Court invented an ambiguity to the word "employee" which in common sense and law, does not, and has never existed. In so going the Court violated the provisions of a statutory construction statute [K.R.S. 446.080(4)] which reads:

> "All words and phrases shall be construed according to the common and approved usage of language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning."

Petitioners seek and are entitled to know, why in the absence of specific legislation, all public employees, irrespective of the nature of their work, should be prohibited from striking. Such a ruling defies rational argument and is simply a technique for avoiding dealing with the merits of the issue. Such argument indicates a limitation in the thinker not attributable to the subject matter. In the case of a peaceful strike of no major disruption of the community, the impact on society is no more, and in many cases is less than, many strikes by private employees. There are many different types of public employees; on the one hand there are public employees whose service to the community is critical in point of time, such as policemen,

firemen, and perhaps sanitation workers. But what about hospital aides, social workers, gardeners, clerks, chauffeurs, and bus drivers? It is not equal protection of the law to permit strikes by private school teachers and prohibit the same act by public school teachers. This argument can also be advanced for utility workers, bus drivers, hospital employees, and many others. In many cases the only distinction between a private and public employee is the identity of the employer, not the function of the employee. A strike by employees of a privately owned transit company is as disruptive as if the company were publicly owned. Strikes by railroads, airlines, truck drivers, and others, though not enjoinable, have far more impact on society than a short-term non-disruptive strike of public school teachers in a protest to the legislature of their state.

The fact of public employment should not *per se,* be a sufficient basis for distinction of constitutional rights. In *Garrity* v. *New Jersey,* 385 U. S. 493, this Court repudiated the argument that different constitutional standards should apply to public employees, holding:

> "policemen, like teachers and lawyers, are not relegated to a watered down version of constitutional rights."

Again, in *Keyishian* v. *Board of Regents,* 385 U. S. 589, the Court found no reasonable basis for distinction of the constitutional rights of public and private employees.

In order for the Circuit Court of Jefferson County, Kentucky to enjoin the teachers strike, the acts of the

teachers in striking must have been either illegal under the laws of the State of Kentucky or conducted in an illegal manner; and in either case, the act must create an irreparable injury. Petitioners have filed with this Court a transcript of the testimony concerning the alleged injury sustained by the Respondent, Board of Education of Jefferson County, Kentucky. The transcript of testimony shows that on February 23, the day before the strike, the superintendent of the Jefferson County school system issued a public statement reported in the press in Louisville, Kentucky that the strike would have to go nineteen (19) days before the Board would consider asking for an injunction (Transcript of Evidence, page 57). In spite of the above statement, the plaintiffs on the third day of the strike, filed this suit for injunction contending that irreparable injury would occur if it continued any longer. We advanced to the Kentucky Court of Appeals the argument that the Respondent's tongue-in-cheek attitude actually reflected its concern over the state basketball tournament which could not begin until the strike was ended.

Allowing public employees to strike is not a novel legal concept. For example, the anti-injunction statute of Minnesota protects all employees except policemen and firemen or any other public employee charged with duties relating to *public safety*. New Jersey has acknowledged that there may be a distinction as to type of public employees. *Board of Education, Burrough of Union Beach* v. *New Jersey Education Association*, N. J., 247 A. 2d 867. The statute establishing the Los Angeles Metropolitan Transit Authority specifi-

cally provided that the employees of the transit authority had the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. *Los Angeles Metropolitan Transit Authority* v. *Brotherhood of Railroad Trainmen,* Calif., 355 P. 2d 905.

In Arizona, that Court held that water district employees had the right to strike and distinguished such employees from those engaged in a strictly governmental function. *Local 266 International Brotherhood of Electrical Workers, A.F.L.* v. *Salt River Project Agricultural Improvement and Power District,* Ariz., 275 P. 2d 393.

A review of all cases involving strikes by public school teachers shows that the issue, while new to Kentucky, has been decided adversely to the teachers in five states: Florida, Kansas, New Jersey, Michigan, and Indiana. In New Jersey, Michigan, and Florida a statute prohibits strikes by public employees. In Kansas and Indiana there is no statute similar to K.R.S. 336.130 granting (all) employees the right. In the Indiana case, *Anderson Federation of Teachers* v. *School, City of Anderson, Ind.,* 254 N. E. 2d 329, in a strong dissent supporting the right of teachers to strike, Justice De Bruler said:

> "The majority opinion offers absolutely no justification for its holding that every strike by any public employee, including teachers, is illegal and therefore enjoinable regardless of how peaceful and non-disruptive the strike is."

B. Writ of Certiorari should be granted also on the ground that the injunction granted by the Circuit

Court of Jefferson County, Kentucky was over-broad in that it enjoined the teachers from

> "aiding, abetting, inducing, encouraging, sanctioning, and condoning the work stoppage or strike."

And further enjoined the teachers from

> "inducing or encouraging a concerted refusal by teachers to withhold their services."

Petitioners pointed out to the Kentucky Court and contend here that enjoining such nebulous activities as "sanctioning" and "condoning" creates such a fatal vagueness that the injunction could not hope to be enforced.

This precise issue was reviewed by the California Court in the case of *In re: Barry, et al.* v. *California,* 436 P. 2d 273, where the injunction prohibited the participants:

> "from ordering or continuing to order or asking or requesting or otherwise inducing or attempting to induce any employee of the plaintiff to cease work for or not to work for the plaintiff."

The Califorina Court found such injunction to be in violation of the first amendment of the Constitution of the United States and said:

> "We are not persuaded by the County's argument that these sections must be viewed in context in order to supply the necessary limitations. When restriction in the area of free expression are at issue, an appeal to context is insufficient to satisfy constitutional requirements of precision."

Additional citations on this point are found in *Stromberg* v. *California,* 283 U. S. 359; *Cramp* v. *Board of Public Instruction,* 368 U. S. 278; *Badgett* v. *Bullett,* 377 U. S. 360.

CONCLUSION

Petitioners earnestly contended to the Kentucky Court of Appeals that the injunction in this case violated their rights under the First and Fourteenth Amendment of the Constitution of the United States. Those Constitutional questions were clearly raised and argued and the Kentucky Court of Appeals has ruled thereon.

For the foregoing reasons this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion and Judgment of the Court of Appeals of Kentucky

COURT OF APPEALS OF KENTUCKY

RENDERED OCTOBER 30, 1970

JEFFERSON COUNTY TEACHERS ASSOCIATION, ET AL., - - - - - - - - - *Appellants*

v.

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - - - - - - *Appellee*

Appeal from Jefferson Circuit Court
Chancery Branch, First Division
Honorable McCauley L. Smith, Judge

OPINION OF THE COURT BY COMMISSIONER CLAY—AFFIRMING

This is an appeal from a judgment permanently enjoining appellants (teachers' organizations and individual teachers in the Jefferson County school system) from participating in a concerted work stoppage or strike in the public schools of Jefferson County. It is contended the injunction violated appellants' statutory and constitutional rights and that no irreparable injury was shown.

On February 24 of this year, the school teachers in the Jefferson County school system failed to report to work, and there is no question but that they conducted for four

days what must be characterized as a strike. They returned to work upon the issuance of a temporary injunction in this action.

Before reaching the controlling question before us, it appears appropriate to give some background concerning strikes by public employees. Under the common law it is recognized that public employees do not have the right to strike or to engage in concerted work stoppages. 48 Am. Jur. 2d, Labor and Labor Relations, §1361 (page 848); Witchita Public Schools Emp. U., Local No. 513 v. Smith, 194 Kan. 2, 397 P. 2d 357 (1964); Anderson, Fed. of Teachers v. School City of Anderson, Ind., 254 N. E. 2d 329 (1970); Goldberg v. City of Cincinnati, 23 Ohio App. 2d 97, 261 N. E. 2d (1970). Norwalk Teachers' Asso. v. Board of Education, 138 Conn. 269, 83 A. 2d 482, 31 A.L.R. 2d 1133 (1951), is a leading case on this subject. It involved the question of whether or not a school teachers' association could engage in a strike to gain its objectives. In answering this question in the negative, the court observed (page 484 A. 2d):

> "Under our system, the government is established by and run for all of the people, not for the benefit of any person or group. The profit motive, inherent in the principle of free enterprise, is absent. It should be the aim of every employee of the government to do his or her part to make it function as efficiently and economically as possible. The drastic remedy of the organized strike to enforce the demands of unions of government employees is in direct contravention of this principle."

Except in a rather oblique manner, the appellants do not dispute this general rule.

The federal government, and some states, have confirmed by statute this principle and specifically denied to

public employees the right to strike. The National Labor Relations Act of 1935, the Fair Labor Standards Act of 1938, and the Labor Management Relations Act of 1947 exclude federal employees from the collective bargaining rights secured in private employees. New Jersey, Michigan and Florida by statute expressly forbid public employees to strike. While our attention has not been called to any legislation of other states *authorizing* strikes by public employees, we may assume for the purpose of this case that such legislation would be valid. On this theory it is appellants' contention that our legislature has recognized such right in KRS 336.130. This statute specifically provides in part:

> "(1) Employes may, free from restraint or coercion by the employers or their agents, associate collectively for self-organization and designate collectively representatives of their own choosing to negotiate the terms and conditions of their employment to effectively promote their own rights and general welfare. Employes, collectively and individually, may strike, engage in peaceful picketing, and assemble collectively for peaceful purposes."

The subject matter of this Chapter 336 is "Department of Labor." It does not contain a definition of "employes." It is appellants' position that this word encompasses all employees, both public and private. If so, appellants would have a legislatively granted right to strike.

In the light of our earlier discussion concerning the distinction recognized in the common law and by statutes between private and public employees with respect to their right to strike, it is our opinion that the word "employes" as used in this statute is ambiguous. In Stone v. United States, D.C. Pa., 55 F. Supp. 230, 233 (1943), it was stated that in construing the meaning of the term "employee",

"* * * it is essential to understand the objectives and scheme of the act in order to determine the congressional intent." It was also said in this opinion that this term is used generally to distinguish between one who performs services for another and one who serves the public at large.

In Knight v. Board of Administration of State Emp. Retirement System, 32 Cal. 2d 400, 196 P. 2d 547, 548, 5 A.L.R. 2d 410 (1948), it was observed that the term "employees" has no fixed meaning which must control in every instance. In State ex rel. Maryland Casualty Co. v. Hughes, 349 Mo. 1142, 164 S. W. 2d 274, 277 (1942), it was said that this term may have different meanings in different connections. We think an examination of the vast number of cases cited in Words and Phrases, Permanent Edition, Volume 14, under the subject "Employee" demonstrates quite persuasively that this term does not have such a fixed meaning in the law that it is free of ambiguity. This being so, it is proper for us to seek the legislative intent carried into KRS 336.130 by reference to the official Acts of the General Assembly. Fidelity & Columbia Trust Co. v. Meek, 294 Ky. 122, 171 S. W. 2d 41 (1943). In so doing our problem is solved.

In 1940 the legislature enacted the Hunnicutt Act as Chapter 105 of the Acts of the General Assembly. This Act related to employer-employee relations, and recognized the right to collectively bargain, strike, picket, etc. Article V of this Chapter provided specifically that there were exempted from all of the provisions of the Act "* * * employees of the United States, the State and any and all political subdivisions or agencies thereof." In Baldwin's February 1941 Supplement to Carroll's Kentucky Statutes this Act was incorporated as Chapter 42 bb. The exemption provision (Article V) appears as section 1599 C-39.

In 1942 the statutes were completely revised as the Kentucky Revised Statutes. In the revised statutes, Carroll's

Chapter 42 bb was incorporated in KRS Chapters 336, 337 and 338. What had been Carroll's section 1599 C-39 (Article V) was compiled in KRS 336.050, 337.010 and 338.010. The exemption provision was incorporated in KRS 337.010(2), for Chapter 337, relating to "Wages and Hours", and in KRS 338.010(3), for Chapter 338, relating to "Safety and Health of Employees", but was not included in KRS 336.050, nor in any section of Chapter 336.

The original Act pertaining to employer-employee relations clearly and expressly excluded public employees from the granted right to strike. The apparently inadvertent omission of this exclusion in Chapter 336 when the statutes were revised cannot be held to have changed the legislative policy and the law. Therefore appellants cannot properly claim the legislature has granted them such right, and their principal contention must fall.

It is next contended that denial of the right of public school teachers to strike violates both the federal and Kentucky constitutions. There is an allegation that the denial of this right constitutes a violation of due process principles, but appellants fail to point out in what respect they have been deprived of due process. This argument seems to be based on the assumption that public employees have the constitutional right to strike, which is an unfounded assumption and begs the question.

It is said that to deny the right to strike deprives appellants of the equal protection of the law under the Fourteenth Amendment to the Constitution of the United States. However, they admit in their brief that valid distinctions may be made between public and private employees in this area. The equal protection question has been considered in several cases. In City of Detroit v. Division 26 of Amalgamated Ass'n., 332 Mich, 237, 51 N. W. 2d 228 (1952), the constitutionality of a statute which specifically prohibited striking by employees of the State of Michigan was ques-

tioned. It was therein held that such a statute did not violate any provisions of the Constitution of the United States or the constitution of the state, including due process and equal protection of the law. In School Dist. for City of Holland v. Holland Educ. Assn., 380 Mich. 314, 157 N. W. 2d 206 (1968), the argument was made that the recognized rights of private employees which had developed in recent years had eroded the basis of the court's decision in the City of Detroit case. The Michigan Supreme Court reaffirmed the earlier determination that the legislature could constitutionally prohibit public employees from striking.

In Abbott v. Myers, 20 Ohio App. 2d 65, 251 N. E. 2d 869 (1969), an Ohio statute which specifically provided "No public employee shall strike" was held valid. The constitutionality of such a statute was also upheld in Fairview Hospital Ass'n v. Public Building Serv., Etc., Minn., 64 N. W. 2d 16 (1954). As we have heretofore noted, there is a reasonable basis for distinguishing between private and public employees, particularly in this area. Therefore, to treat them differently is not a denial of equal protection in the constitutional sense.

It is further contended that the denial of appellants' right to strike constitutes a violation of the Thirteenth Amendment to the Constitution of the United States and § 25 of the Kentucky Constitution in that it imposes on appellants involuntary servitude. This contention is adequately answered in City of Los Angeles Building and Construction Trades Council, Cal., 210 P. 2d 305 (1949); In Re Block, 50 N J. 494, 236 A. 2d 589 (1967); and Pinellas Co. C. Teachers Ass'n. v. Board of Public Instr., Fla., 214 So. 2d 34 (1968). The basis of these decisions is that an injunction of the kind before us does not "compel performance of personal service against the will of the employee" because he can terminate his contract if he so desires.

It is further contended the injunction violates appellants' constitutional rights of free speech and public assembly. Such rights are not absolute but are limited by the countervailing rights of others. The injunction enjoins appellants from "participating in a concerted work stoppage or strike by the teachers in the public schools of Jefferson County." It prohibits the commission of illegal acts, and the rights of free speech and public assembly do not license violation of law. In City of Los Angeles v. Los Angeles Building and Construction Trades Council, Cal., 210 P. 2d 305, 309 (1949), it is said:

> "* * * illegality of purpose provides a complete basis for injunctive relief against conduct which would otherwise be deemed a permissible exercise of fundamental rights. Where such illegality consists of violation of settled public policy, as well as in other cases of illegal conduct, the injured party has a right to be protected from the imminent harmful consequences of such action."

It is next contended that because two of the appellant organizations were operating under a negotiating agreement with appellee, this gave them the same bargaining rights which unions have in private industry, including the right to strike. We are cited no authority for the proposition that the right to collectively bargain gives the right to strike, particularly when the right to strike is otherwise inhibited. It may be pointed out that the contract between one of the appellants and appellee specifically provides for arbitration, and by implication this would foreclose the right to strike as a means of settling a grievance. See Teamsters Union v. Lucas Flour Co., 369 U. S. 95, 7 L. Ed. 2d 593, 82 S. Ct. 571 (1962).

It is finally contended appellee failed to show such irreparable injury resulting from this strike as to justify

an injunction. The record contains ample proof of serious and irreparable impairment of the school system of Jefferson County (of which a court probably could take judicial notice). The contention is completely lacking in merit.

The judgment is affirmed.

All concur.

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